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Hearing on Update on Enforcement of Proposition 103

Senate Committee on Insurance, Claims and Corporations

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CALIFORNIA LEGISLATURE
SENATE COMMITTEE ON
INSURANCE, CLAIMS AND CORPORATIONS
SENATOR ALAN ROBBINS, CHAIRMAN

Hearing on
**UPDATE ON ENFORCEMENT
OF PROPOSITION 103**

DEPOSITORY

APR 4 1989

RECEIVED



January 23, 1989
Board of Supervisors Hearing Room
Hall of Administration
Los Angeles

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1989
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California Legislature

SENATE COMMITTEE ON INSURANCE, CLAIMS AND CORPORATIONS

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SENATE INSURANCE, CLAIMS AND CORPORATIONS COMMITTEE
January 23, 1989

AGENDA

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GOLDEN GATE UNIVERSITY

1) OPENING STATEMENT

- Senator Alan Robbins

2) POLICYHOLDERS

- Rene' Weir, Mobilehome Park Manager, Thousand Oaks
- Karen Black, Professional Consultant, Thousand Oaks
- Riika Pitkonen, Security Agency Worker, Burbank

3) DEPARTMENT OF INSURANCE

- Char Mathias, Deputy Insurance Commissioner

4) INSURANCE AGENT

- Cal Gregory, Travelers Agent

5) INSURANCE COMPANIES

Travelers Insurance Group

- Russell Press, Vice-President
- Bob Hogeboom, Counsel

State Farm Insurance Companies

- Gene Livingston, Counsel

CHAIRMAN ALAN ROBBINS: I am Alan Robbins. I am the chair of the Senate Insurance, Claims and Corporations Committee. With me at this hearing is Senator Watson, Senator Diane Watson, who represents a portion of Los Angeles County in the State Senate.

I'm not really a supervisor. We're just using their committee hearing room, though I must say that the seat does feel comfortable.

I have a slightly longer opening statement than usual, but I wanted to be sure and go through the full history to get us to the point where we are today, because a substantial portion of today's hearing is the question of how quickly things are moving.

As of tomorrow, it will have been twelve weeks since the voters of California passed Proposition 103, sending a strong message to those of us in Sacramento in completely rewriting insurance law in California.

Ten weeks ago, our committee held it's first hearing and began to focus in on the implementation of Proposition 103. At that hearing we had a long list of insurance companies that were balking at the concept of following Proposition 103 and were not following the law. We had literally row after row of insurance company executives that we had required to be at the hearing.

On December 7, the California Supreme Court ordered most provisions of Proposition 103 into effect and ordered expedited hearings on the two remaining issues and on all of the issues that question the constitutionality.

A week later this committee held its second enforcement hearing, and we began to focus on what was becoming a smaller list of insurance companies that continued to violate the law. The December hearing focused on two subjects in a short list of problem companies. The primary issue was the companies that refused to renew automobile insurance policies in violation of their renewal requirement of Proposition 103. Since only one large company was continuing to refuse to renew its policyholders, we focused on Travelers Insurance and their 25,000 auto policies in California. At our urging, the Insurance Commissioner committed in writing to this committee that a cease and desist order would be issued by December 31, 1988. They will be at this hearing, having some testimony from the Department on why that has not happened.

During the last ten days in December, I spoke with Deputy Commissioner Ray Bacon, and he explained that the Department would not be able to meet that deadline, but would schedule a hearing for January 4 in San Francisco and would issue it at that time.

At the January 4 hearing, the Department delayed the issue until Tuesday of last week to allow the filing of legal briefs. The final brief was filed six days ago, and

California is waiting. Travelers has used the delay to dump at least 3,000 policyholders, and we still are waiting for the Department to take action.

Every member of this committee that I have spoken with is unhappy that the deadline set by the Insurance Department, it's written memorandum has not been kept. We acknowledge that Travelers Insurance Company probably has a right to close up their umbrella and stop doing business in this state, but that is not the issue. Travelers to date has broken the law and is refusing to renew without complying with the provision of the law that requires an insurance company to have another insurer contractually assume its renewal obligations before it can leave legally.

If a doctor retires from medical practice, he has a legal obligation to assist his sick patients in finding a new doctor. If the electric company or the telephone company wants to go out of business, it must petition the PUC and get another company to take over before it can leave people stranded. Likewise, Travelers, too, must follow the law. And if Travelers is going to leave, it must leave in a legal manner.

The Department's foot-dragging in issuing a cease and desist order is comparable to a police officer watching an assault in progress while waiting several hours to take action. The victim gets brutalized by being beaten over the head while he waits for the cop to make an arrest.

The second issue that has developed is rate discrimination against new applicants by State Farm Insurance Company, the insurer of 17 percent of the auto market in California. Since the passage of Proposition 103, that company has refused to accept new applicants in its preferred subsidiary company, regardless of driving record, and has engaged in what we believe is rate discrimination by forcing new applicants with perfect records into their substandard company at rates 20 to 40 percent higher than they should have been charged.

On November 23, 1988, the Insurance Department issued a press release and an order of noncompliance indicating that the State Farm policy is illegal. Though we continue to prod the Department and State Farm, nine weeks later they are still negotiating. Our ability to quickly provide assistance to the drivers' being forced to pay higher rates has been weakened by the fact that the Department has moved at a snail's pace and that to date no hearing has been scheduled. Tough and proper enforcement of the law demands immediate action, not action at a later date, after thousands of policyholders have been forced to pay higher premiums.

Today I will ask the Department and State Farm to comment publicly on proposed actions under consideration by State Farm to comply with the law and to rectify this problem. This is an issue that affects the public and the public has a right to know. While I have been told unofficially and in confidence for weeks what is supposedly about to happen, I have to be honest -- I have grown impatient and my constituents have grown

impatient. The people of this state have a right to know what is happening and to have an explanation why no hearing has been scheduled despite a two-month delay. Because of the laws of economics, allowing these companies to continue breaking the law has given other companies a green light to charge higher rates.

My opening statement at our hearing I stated, quote, "The public perception is that State Insurance Commissioner has not been strong enough in dealing with insurance companies that are raising rates or threatening to abandon their policyholders by leaving California." Since that time, we have given the Department opportunity after opportunity to change that perception by taking firm, tough action to protect the public of California and to bring stability to the California automobile insurance marketplace. Yet State Farm Insurance has been able to delay action for nine weeks since the Department determined they were acting illegally, and Travelers Insurance has been able to dump thousands of policyholders while the deadlines set by the Commissioner seems to be delayed interminably. If we are to protect the people of California, it is imperative that we move with action rather than timidity. The Department can not only act when pushed. If need be, this committee is prepared to push, kick, and drag the Department into a post-Prop. 103 era of tough and fair enforcement against insurance companies that violate the law. That shouldn't be necessary. The Department should act without hesitancy against those that violate the law.

We'll start today's hearing by hearing from some of the individuals who are directly affected by problems with their policies with Travelers Insurance. We will then hear from the Department, and I would appreciate some very direct responses. And then if they wish, the two companies will be given an opportunity to respond. Let me begin by asking Rene' Weir -- if I mispronounce anyone's name, please excuse me and accept my apologies -- who is a mobilehome park manager. We ask that each of the individuals coming forward please state your name for the record and please give us a short account of what your problem has been.

MS. RENE' WEIR: My name is Rene' Weir and I live in Thousand Oaks and I am one of Travelers' victims, as everybody is here.

One month before my insurance expired, which was 1-8, on January 8, I called my broker, Mr. Gregory. He said I could get another insurance if they were writing. Most of them are not writing. They'll take your money, but then cancel you out after a month. So you have to make sure that they're writing insurance policies. Okay?

I waited it out. I decided to wait it out and see if Travelers would pick me up, because Mr. Gregory had said they had picked up twelve people or yeah, I think twelve people it was. But I was due on the 8th and they had picked them up earlier. I was not one of them. So I waited it out and ended up at another broker which, of course, was much more than what I was paying. But I had no choice in the matter.

I have a daughter 22 years old, who is being treated like a 16-year-old driver, with a clear record -- no drinking, no tickets, drives a Volkswagen, and is a college student with a straight A average and still is charged a very high price. And what I can't understand is if the state of California put this into law, why is not -- nobody is doing anything about it. That's what I cannot understand at all.

CHAIRMAN ROBBINS: Well, the purpose of this hearing, to be very candid, is to find out why the action on implementing the law is taking as long as it is.

Let me ask you: Did you -- was there anything in your driving record or your driving that would have been a basis for you nonrenewal by Travelers?

MS. WEIR: No. No, I've driven since -- I came out out of the state of --Brooklyn, New York to the State of New Jersey and then to the California. And I've never had a ticket, and my license was never, you know, I've never had it taken away from me. My daughter's drive -- she's driven here since 16 years of age, has never had a ticket. And like I say, she is a college student and still, prices go up. And I think it's about time, you know, they've been reaping the harvest for years. And if they have to roll it back, why not roll it back and give us our just due now? We're due it now.

CHAIRMAN ROBBINS: How much additional, either in terms of a percentage amount or a dollar amount, were you required to pay with the other company as a result of the fact that Travelers Insurance illegally refused to renew your policy in January?

MS. WEIR: My daughter's insurance went up to 400 and change, where it was 300 and change before with Travelers. Mine went up to 300 and change, where it was 200 and change with Travelers.

CHAIRMAN ROBBINS: All right. Senator Watson, any questions? Okay, thank you very much for taking the trouble to come to our hearing this morning.

Karen Black. For the benefit of Travelers, we're not going to bring in all 25,000 of your policyholders that you've refused to renew, but we do want to hear from several in order to make what I think is a fairly obvious point: that the failure to follow the law affects people on a very direct basis. For the people who have been affected, I think it's extremely unfair. Ms. Black.

MS. KAREN BLACK: My name is Karen Black. I also live in Thousand Oaks. I have an insurance policy with Travelers and had had for the past four years. My insurance policy expires on the 9th of February.

On getting the letter from Travelers, I was really very surprised and then tried to start and find some insurance from elsewhere. I've called a number of people who have not bothered to return my call. One of the reasons I stayed with Travelers was because the coverage was good and I didn't have to go through the trouble of finding another insurance broker. Having a full-time job, actually spending some time finding alternative insurance coverage is not easy for me, and I'll actually have to spend some

time the next week and devote a reasonable amount of time to try and find that, which is difficult. It seems unfair when my driving record is clean and has been clean since I came to this country, that because of what they say is their inability to keep up coverage, we have to suffer for it.

CHAIRMAN ROBBINS: Senator Watson.

SENATOR DIANE WATSON: How long have you been with Travelers?

MS. BLACK: Four years, since I came to this country.

SENATOR WATSON: Four years, I see. And what has your premium been?

MS. BLACK: \$380 at the moment for six months.

SENATOR WATSON: And you've paid that on time?

MS. BLACK: Yeah.

SENATOR WATSON: What area do you live in?

MS. BLACK: In Thousand Oaks, Ventura County.

SENATOR WATSON: In Thousand Oaks. I see. Has this in the past been deemed a high-risk area, do you know?

MS. BLACK: Not at all.

SENATOR WATSON: I guess not. All right, thank you.

CHAIRMAN ROBBINS: I presume you have not been convicted of drunk driving or ...

MS. BLACK: I have not.

CHAIRMAN ROBBINS: Anything else that would -- accidents or anything else that would give basis for your nonrenewal?

MS. BLACK: No, I have no accidents, no tickets, no nothing.

CHAIRMAN ROBBINS: Okay. Well, hopefully -- what is the date by which your renewal comes up with?

MS. BLACK: The 9th of February.

SENATOR WATSON: May I just ask what age range are you? Between 20 and 30?

MS. BLACK: I'm 31.

SENATOR WATSON: 31. Thank you. Not a teenager.

CHAIRMAN ROBBINS: Okay, thank you. Hazel Dooley.

MS. HAZEL DOOLEY: My name is Hazel Dooley and I live in San Gabriel and I've been with Travelers five years, no accidents, no tickets, and pay my premiums on time. And I just don't understand when we passed Proposition 103, why didn't we follow through with it?

SENATOR WATSON: Mrs. Dooley, what area of San Diego are you in?

MS. DOOLEY: Del Mar, in San Gabriel. And I've heard that Travelers has written new policy, automobile, so why did they cancel out, say, 3,000? This was hearsay.

SENATOR WATSON: Excuse me, what is your zip code?

MS. DOOLEY: It's 91775.

CHAIRMAN ROBBINS: Your renewal date is ...?

MS. DOOLEY: February 13.

CHAIRMAN ROBBINS: And when did you receive the notice from Travelers that they were refusing to renew?

MS. DOOLEY: About a month ago.

CHAIRMAN ROBBINS: Okay. I presume that you have not had any traffic accidents or drunk driving conviction?

MS. DOOLEY: No. (Chuckles.)

CHAIRMAN ROBBINS: I apologize for asking. The reason I ask ...

MS. DOOLEY: I know.

CHAIRMAN ROBBINS: ... each of the people is that under the provisions of Proposition 103, Travelers can legally refuse to renew for one of only three reasons: if you refuse to pay your premium -- you don't pay your premium; if you commit fraud against the insurance company; or if there is a substantial change in the risk.

I'm presuming you didn't commit any fraud against Travelers.

MS. DOOLEY: No, if I did, I wouldn't be working at the Federal Reserve Bank. (Laughter.)

CHAIRMAN ROBBINS: I would tend to think not. And I presume you have offered to pay your premium.

MS. DOOLEY: Oh, yes, yes. In fact, I just sent in the premium that was due just about two weeks ago. And this date says December 30, but that's not when I received it. I received it in January, about the middle of January.

CHAIRMAN ROBBINS: Okay. Thank you very much, Mrs. Dooley.

MRS. DOOLEY: You're welcome.

SENATOR WATSON: Can I, Mr. Chairman, get the zip code numbers for the last two?

CHAIRMAN ROBBINS: Sure. Why doesn't our staff get those and they'll furnish them to you?

SENATOR WATSON: Yes. Ms. Weir and Ms. Black.

CHAIRMAN ROBBINS: Riika -- help me out.

MS. RIIKA PITKONEN: My name is Riika Pitkonen and I live in Burbank.

My policy expires on February 1. I've been with Travelers since I was 18, four years ago. On this, I've never had a ticket or an accident. On this policy that I have right now, I'm on with my Dad's insurance. We live together. I've been calling around to get insurance in just my own name, and the quotes that I've been getting (Chuckles), it's -- I have a 1987 CRX, so I have to have full coverage because I still owe money on it. And the quotes I have been getting are just phenomenally more than I'm paying now.

To begin with, people don't want to write insurance for me just because of my age, regardless of my driving record. And that's not fair, true. But -- another thing, they're writing me as an assigned risk for no reason. And another thing is that -- the difficulty that it's caused me is I'm buying my first home, and I'm supposed to close escrow February 1; and every insurance company that I've called has demanded a down payment whereas now I'm making monthly payment. And a downpayment of \$800 or so, there's no way that I can come up with extra money when I'm supposed to close escrow on the same date as my policy renews, is supposed to renew.

I guess that's about it.

SENATOR WATSON: What is your zip code, please?

MS. PITKONEN: 91501.

SENATOR WATSON: 995 ...

MS. PITKONEN: 91501.

CHAIRMAN ROBBINS: Okay. I presume you have been willing to pay your premium to Travelers?

MS. PITKONEN: Yeah.

CHAIRMAN ROBBINS: You have not committed any fraud against the company?

MS. PITKONEN: No.

CHAIRMAN ROBBINS: I presume you've not any drunk driving convictions or accidents that would be a basis for refusing to renew your insurance?

MS. PITKONEN: No.

CHAIRMAN ROBBINS: In terms of how much the increased cost for coverage it would cost you to get a new policy at this time, what -- could you give us an idea in terms of either dollars or percentage how much the increased coverage looks like -- appears it's going to be, increased costs?

MS. PITKONEN: The quotes, that doesn't necessarily mean that that's what they're going to actually write the insurance for, their quotes have been anywhere from \$300 to \$800 more. It's more than -- most of the quotes have been more than what my father and I pay together. So.

CHAIRMAN ROBBINS: Okay. All right, well, thank you very much.

MS. PITKONEN: Thank you.

CHAIRMAN ROBBINS: And we hope we'll have some relief for you by February 1.

MS. PITKONEN: Thank you.

CHAIRMAN ROBBINS: Char, we've warmed the seat up for the Department. In doing so, brought back to a human level what you know and I know and the Commissioner knows is that each individual person who is refused renewal, forced to pay higher premiums, or unable to find insurance at all, is a personal tragedy for that individual. Every day that this gets delayed is additional time that there are every day more and more people

affected.

Let me refer you to the excerpt of transcript from our previous hearing, and in particular at the bottom of page 9 and page 10. Let me take a minute and read to you what the Commissioner said in response to our question: "I feel that what we have to do is implement the statute and what it tells us is that they have to renew and, therefore, the normal course of action if they continue with their interpretation which they're telling us they feel the statute is unconstitutional is to issue a cease and desist and go to court on that basis. I'm assuming that they will then mandate the Department to draw the cease and desist and we will be going to court. And, I suspect that that may very well be an area where we will probably be getting an answer sooner or later."

I then interjected: "Oh, I suspect, in every area we're going to get an answer sooner or later ... it's the sooner that we prefer rather than the later."

And then the Commissioner continues: After you and I -- "And you and I really agree on that ... particularly, from our standpoint, it's very difficult to be challenged ... we like to get things done."

I then interjected: "Yes, absolutely. Now, under Proposition 103, there is a procedure where the company, if they want to stop writing auto insurance and, if they make contractual arrangements with another company, to assume their legal responsibility with respect to those policies. Travelers clearly has not done that."

The Commissioner then went on to confirm that they had not done that and to state that the Department would issue a cease and desist order. Initially, she said early in 1989. The committee then pressed her on the date. And the committee was promised that by noon we would be advised when we would have that date. We then received, timed 11:45 a.m., through the electronic wonders of facsimile, a response on Department letterhead that says -- it's from Carey Fletcher, Department of Insurance: "Urgent, please deliver the following message to Senator Robbins as discussed by phone this morning. Insurance Commissioner Roxani Gillespie is still attempting to reach her legal counsel who is attending the National Association of Insurance Commissioners' meeting in New Orleans. However, she advised that a cease and desist order will be issued to Travelers by the end of this month."

MS. CHARLENE MATHIAS: That's -- that's from Ms. Gillespie herself?

CHAIRMAN ROBBINS: Yes, that's dated December 14, 1988. If that date had been complied with, I think each of the people who you just heard testify would not have the personal dilemma that they face. Travelers has been able to dump at least 3,000 of their policyholders, and that was when the number -- when we had the hearing on the 4th in San Francisco, they indicated they had 22,000. They had 25,000 as of our committee hearing a month earlier.

Let's start with the question of Travelers and then we'll get into the State Farm

Insurance question. Why hasn't the cease and desist order been issued.

MS. MATHIAS: Mr. Chairman and Senator Watson, I'm Charlene Mathias.

SENATOR WATSON: Excuse me. Before you respond, where is the Commissioner?

CHAIRMAN ROBBINS: That's a fair question.

MS. MATHIAS: The Commissioner is in San Francisco as far as I know, Senator. She even notified the Chairman that she would not be here today and that I would. In fact, the Chairman in his notification to the Department said that it was not necessary for her to appear, and she has appointed me to appear in her place.

SENATOR WATSON: Go ahead, please.

MS. MATHIAS: I am Charlene Mathias, representing the Commissioner here today.

CHAIRMAN ROBBINS: The Chairman who is today in his most impatient mode issued a very gentle letter of invitation to the Commissioner and indicated that we preferred the Commissioner testified in person, but that we recognize that that would not be possible, that we would accept your testimony instead. I also spoke with the Commissioner and she assured me you'd have the answers to all of our questions. And please, I don't want to -- and please continue, I don't want to get you away from the question of why the cease and desist order has not been issued.

MS. MATHIAS: The first thing I have to state, Senator, is that the Commissioner must have misspoke herself when she's talked about a cease and desist order. A cease and desist order is not one of the alternatives under the McBride-Grunsky Act, which is the act that the Proposition 103 falls under. The action that the Department is authorized to take is a notice ...

CHAIRMAN ROBBINS: Charlene, if you could talk directly into the mike, it would ...

MS. MATHIAS: Yeah, is that better?

CHAIRMAN ROBBINS: Yes, thank you.

MS. MATHIAS: The action that we're authorized to take under that act is a notice of noncompliance, despite the sound of the names, the notice of noncompliance is really a stronger order, carrying with it stronger penalties. So I have to assume that the Commissioner misspoke herself when she said that a cease and desist order would be issued. That was not the proper name for the order that she's authorized.

With respect to the time, I think you understand that the Department -- well, you have made your point -- all of these circumstances fall very heavily on individual policyholders. I know, too, that you understand that the Department and the Commissioner has an obligation to defend and represent all the policyholders in the state, which means to her that the Department must prepare its cases in the most professional and the most proper ways available. And the Department came to the conclusion that they could not be ready by the date, although I'm sure she made that gesture in good faith at the time, but that we could not have our case prepared by that

date and needed some additional time.

Now, the notice was issued to Travelers on the 23rd of December, the notice of noncompliance, charging the company with nonrenewing policies in violation of Section 1861.03, the new section in Proposition 103. The company requested the hearing, and that hearing was held on January 4. The final filings, as you stated in connection with the hearing, were made on January 17. The transcript is now complete, and the hearing officer has the matter under submission. He has stated that he will make a final recommendation to the Department by the end of the month. He stated that publically in the hearing, and I believe you were there, Senator.

Now, as to why the case is taking so long. There are complicated issues presented in that case. The Fireman's Fund case, in which the order of noncompliance was recently issued, had one simple, relatively simple issue, and that is whether the notices of noncompliance apply to policies in effect before November 8, or apply to policies after November 8. With the Travelers' case, there are defenses and issues of statutory construction that are a first impression. The proceeding is quasi -- all these proceedings are quasi-judicial in nature. The administration acts both as prosecutor and as judge in these hearings. And the Commissioner is determined that -- as I said before, everything is handled in the proper way, that the Department prepares its case in the most professional manner, and we're proceeding in that way now. We want an order that a court will uphold.

SENATOR WATSON: May I ask what the time line is? What do you -- want is your time that is necessary to do what you describe? And Mr. Chairman, were you aware that that is what was taking the time?

CHAIRMAN ROBBINS: I was -- I went to the trouble of going to the hearing in San Francisco. Please -- and I must say that the hearing examiner did not indicate the exact date as to when the order was to be issued. When I had asked at the -- prior to the hearing, when I spoke with Mr. Bacon in your office, your deputy commissioner, the last week in December, he indicated that the intention of the Department would be to issue an order at the hearing, and that the order could not be issued until the hearing was held because the hearing was required, but that once the hearing was held the briefs would be done in advance so that the order could be issued immediately.

Let me ask, you say you assume that the Commissioner misspoke herself. I presume you've discussed -- I mean, since we advised you in advance of what the subject was to be responded to at the committee, I presume you asked the Commissioner?

MS. MATHIAS: Yes. Yes, Senator, we've talked it over and she agrees that that was not the proper name for the action.

CHAIRMAN ROBBINS: Okay. Now, the Department has the legal authority to issue a cease and desist order.

MS. MATHIAS: Not under these sections that we're talking about on Proposition 103.

CHAIRMAN ROBBINS: I understand, but under the Insurance Code, it has the authority of cease and desist order.

MS. MATHIAS: Under other circumstances, yes. Applying to other provisions of the code. But it has no choice with these provisions.

CHAIRMAN ROBBINS: Okay. Let me -- slow down for a moment because I want to get this straight. The provisions in the Insurance Code that authorized the Department to issue a cease and desist order cannot be used in this case?

MS. MATHIAS: That's my understanding, Senator. They apply to violations of the law outside -- and I can't be specific with you, because I'm not prepared to speak on those this morning. They do not apply to the provisions in the McBride-Grunsky Act. Proposition 103, as you recall, was placed into the McBride-Grunsky Act and refers to the actions and the penalties in that act. Cease and desist orders apply to other violations of the code.

SENATOR WATSON: But, at no time can they be used for other provisions that come under the authority of the Commissioner?

MS. MATHIAS: I'm sorry, Senator, would you repeat that.

SENATOR WATSON: At no time can they be used on applicable to other provisions of any of the law under the authority of the Commissioner - cease and desist?

MS. MATHIAS: That's my understanding from speaking with the Department of attorneys. That in this case, there is no choice. The order of noncompliance is the action that the Commissioner is authorized to take under these sections.

SENATOR WATSON: I see. Is there any attorney here with you who can explain that? I just want to know which authority we can use in this regard. Is there anyone here who can explain that to us.

MS. MATHIAS: No, but we can provide the committee with the sections which -- for the violation of which a cease and desist order can apply.

SENATOR WATSON: I don't know the law that well. The Chair is an attorney, but I thought you can apply a cease and desist order whenever you see a violation. Now ...

MS. MATHIAS: Our attorneys are very firm on that, Senator, that it will not apply in these cases. I convey that to you.

CHAIRMAN ROBBINS: What I'm having a great deal of trouble understanding is why it has taken -- this is the first time that I've been made aware that that's the Department's position. Let me refer you to Page 10 of the transcript of the December 14 hearing. I asked the question, "Commissioner, therefore you agree that they have acted unlawfully?" "Yes, yes, Senator, I do." "Okay, your Department has the authority to order a cease and desist order." "Yes, we do." "Okay, are you going to issue one?" "Yes, we are." Now, you're -- and then when I spoke with Mr. Bacon later

in December, he said that the Department had authority to issue a cease and desist order, but could not do so until a hearing was held, which is why the hearing was being scheduled on December 4 -- pardon me, on January 4. You're now telling me that the Department does not have the legal authority to issue a cease and desist order even after holding a hearing?

MS. MATHIAS: Not in this case. Yes, Senator, that's what I'm telling you. And I have to reiterate that the Department's power is stronger in the case of the notice of noncompliance than it is in the cease and desist order. We would be happy to supply you with a contrast of these two provisions.

CHAIRMAN ROBBINS: Okay. But once you issue the notice of noncompliance, and then Travelers Insurance Company still refuses to comply with what you've told them to comply with in the notice of noncompliance, can you then issue a cease and desist order?

MS. MATHIAS: The provisions that basically say that the order does not become effective for 20 days, in which time that the Travelers can petition the court for a review; if they petition the court, it does not become effective for 15 more days or such time as the court wants to stay the order. Once the order is final, there is a fine provided of \$10,000 a day up to a maximum, for a violation of the order, of the final order. There is also a provision for revoking or suspending the certificate of authority.

CHAIRMAN ROBBINS: But there is no provision for issuing a cease and desist order?

MS. MATHIAS: That's correct.

SENATOR WATSON: Can -- would the witness respond to my earlier question, that is, what is your time line for your notice of noncompliance?

MS. MATHIAS: Senator, the statute does not provide a particular time within which the Commissioner must issue her decision, but ...

SENATOR WATSON: No, I'm asking you, what are the plans?

MS. MATHIAS: Well, I wanted to put it in that frame of reference ...

SENATOR WATSON: I understand.

MS. MATHIAS: ... the Department construes that to be a reasonable time. The hearing officer has said that he would make his recommendation to the Commissioner by the end of the month or around the end of the month, early February, late January. She will -- depending how -- what the recommendation is, she may accept it, reject it, or modify it. And depending on her reading of the transcripts and the filing, she will take a certain amount of time to come to the decision as to whether to accept or reject or modify. And all I can assure you is that it will be within a reasonable time, that a court would find to be a reasonable time.

CHAIRMAN ROBBINS: What are you expected to do, if you're one of those 25,000

policyholders, if you're one of these four people who have come before us this morning, and we could go on for hours with individuals who are similarly situated, days, what are you supposed to do if you're one of those people? The law says they have to renew your policy. Clearly, these are clear-cut cases. These aren't borderline cases where of -- somebody who has had quote-unquote "only one drunk driving conviction." These are people who are clear-cut cases. The law has been violated. What are they supposed to do?

MS. MATHIAS: Senator, you have made your point, and you've made your point well, and I can reassure you that the Commissioner is trying to prepare these cases so that they will hold up in court. As far as the individual person goes, the only thing that person can do is what they would do under other circumstances, and that is go out and look for other insurance coverage. Now, in the media and in some of these hearings, there is a feeling that the only alternative is for persons to find coverage with higher premiums, which is not the case. I was discussing something in an elevator the other day, and someone piped up and said, "Well, I found insurance at a lesser premium." And what we've always urged, I believe the committee staff has urged people to do in various cases, is to go out and shop. And that is one of the reasons that Proposition 103 has a provision that there was, at some point, be comparison shopping figures available for people. I would urge anyone who has had their -- received a notice of nonrenewal to -- if they are good drivers, to go look at other companies. Perhaps they can find a policy with a lower premium.

CHAIRMAN ROBBINS: Perhaps they can, but the experience of virtually all of the constituents who have contacted my office and nonconstituents, is that the premium they have to pay is a substantially higher premium, especially since many companies are following practices -- that we'll get into in a moment -- of putting them into substandard companies at 20 to 40 percent higher.

And I'm deeply disturbed that if the Department does not have the authority to cease and desist order, that that wasn't conveyed to this committee and to the public in an earlier date. It's taken the Department a month and a half to determine that it appears not to have the authority to proceed under the path the Department said it was going to proceed under in the first place. I have to be honest with you. Our staff disagrees. Our staff believes -- and I'm going to take a second and take a look at it, that Section 790.06 of the Insurance Code gives the Department general cease and desist authority.

Do you have a copy of Section 790.06?

MS. MATHIAS: Not with me, and I have my code back at my seat, Senator. I can get it, if you would like.

CHAIRMAN ROBBINS: Do you want to take a second and get it?

SENATOR WATSON: Mr. Chairman, while she's getting that, it just -- I'm a bit disturbed -- the Commissioner is not here, I think this is a very important hearing; and number two, I'm surprised there's not an attorney representing the Department available. I am not an attorney and I cannot quibble over whether cease and desist or notice of noncompliance is the more forceable authority to use. What I am disturbed about is that I don't sense -- and since the Commissioner is not here -- I'm trying to listen to her assistant, but I don't sense an effort to comply with what the committee has asked. I understand wanting to prepare a case that will stand up in court, but I understand the urgency of complying with the law. I think that the committee would deserve, at least a period of time, from the Commissioner as to when she feels the work could be completed. I don't like this open-endedness that I'm hearing and that might be because the Commissioner is not here. It really disturbs me to think that we're almost into February now, and we have no more idea as to when this work can take place. Apparently, there has been some research done by your legal staff on which one of these orders you can use. And I'll have to go along with whatever you tell me. I am not an attorney. I want to make that quite clear. I'm not arguing that issue. But, what I sense here is that there is no definite time period. You know, you'll get back to us when you get it done. That is not satisfying to me. Mr. Chairman, I really think we need a frame -- a period of time that we can look forward to, since reading exerts from the transcript shows that the Commissioner committed herself, that it would be done either at the end of December or early in '89. If we're looking for a different provision in law that covers this, why should it take so much more time if the case is prepared?

CHAIRMAN ROBBINS: There's no question, and I agree with you. I would like to ask the Deputy Commissioner about the cease and desist order, and then go on with the question. If we're not going to get a cease and desist order, what we are going to get, and when we're going to get it?

MS. MATHIAS: What section again, Senator?

CHAIRMAN ROBBINS: 790.06. I quote, "Whenever the Commissioner shall have reason to believe that any person engaged in the business of insurance, is engaging in this state, in any method of competition, or in any act or practice in the conduct of such business, which is not defined in Section 790.03, and that such method is unfair, or that such act or practice is unfair or deceptive, in that a proceeding by him in respect thereto, would be in the interest of the public. He may issue and serve upon such person an order to show cause containing a statement of the methods, acts, or practices alleged to be unfair or deceptive, and in notice of hearing thereon, to be held at a time and place to be fixed therein." My fairly clear reading of the section is that it would appear to give the Commissioner the authority to issue a cease and

desist order. When any person is violating -- and the insurance company is acting in an unfair manner.

MS. MATHIAS: Senator, it is my understanding that our legal department reads Proposition 103, in the section towards the end there, that specifies violations in the section, it may be a point 11 or 12 -- Jim, if you've got a copy of it right there -- it specifies the section to be used. Do you see it, or shall I go get my copy?

CHAIRMAN ROBBINS: Section -- you're referring to 186.14: "Violation of this article shall be subject to the penalties set forth in Section 1859.1. In addition to the other penalties provided in this chapter, the Commissioner may suspend or revoke, in whole or in part, the certificate of authority of any insurer which fails to comply with the provisions of this article." Is that what you're referring to?

MS. MATHIAS: Yes. And the fact that it refers to this chapter. The chapter is the McBride-Grunsky Act. As I stated before the order of noncompliance is the order that's specified in that act.

CHAIRMAN ROBBINS: So what you're saying is that because the act says -- because Proposition 103 says they're subject to the penalties in McBride-Grunsky, that means you can't use any other provision of the Insurance Code, or any other section of law against them?

MS. MATHIAS: It's my understanding from our attorneys that they have said that there's no choice, Senator, that this is the act where we need to look for enforcement actions. And we would be happy to provide your committee, as I said, with our arguments on that point.

CHAIRMAN ROBBINS: Well, I appreciate your willingness to provide us with that. My concern is, why did it take six weeks after the Commissioner said that it would be issued, for the Department to discover and advise us that this is not a path that it was going to pursue?

MS. MATHIAS: I don't know, Senator. I can tell you that the Commissioner misspoke herself. I don't know that anyone thought it was a real issue of importance since the order of noncompliance is a stronger order carrying greater penalties. If it had been the other way around, I think there may have been -- our attention may have been focused on that.

CHAIRMAN ROBBINS: All right. What are we going to get? And when are we going to get it? There are people here, each of them have different dates of when their policies are up for renewal. They want to know; I would like to know; Senator Watson would like to know. On what date -- by what date is there going to be action, and what is the action that the Department either can or will take?

MS. MATHIAS: The action is either an order of noncompliance, final except for the effective period, and the petition to the court. As to when it will be ready, I really

can't commit to you, Senator. I don't know, and I'm not sure anyone in the Department knows. As I mentioned before, these are quasi-judicial proceedings. The Department acts as both prosecutor and judge. It is just simply improper for me to make any further comment on what the order will be and when it will issue. I really must respectfully decline to do so.

CHAIRMAN ROBBINS: You can't tell us what the order will be because of the nature of the proceeding. If the Insurance Commissioner were to get really irked, and decided that she was going to slam down her fist and get tough, what's the toughest thing she could do? What authority does she have? Since you've told us basically, "Well, don't worry about the fact that we're not pursuing a cease and desist; and we're telling you six weeks later that we don't have that authority; we're pursuing the noncompliance authority." What is the toughest thing the Commissioner can do?

MS. MATHIAS: Under these provisions in the McBride-Grunsky Act, she can issue the order of noncompliance, the final order, if that is the finding that is made. Then if the company doesn't comply, the company can be fined, and there is a proceeding for suspending or revoking the authority of the company to operate in California.

CHAIRMAN ROBBINS: By suspending or revoking the authority of the company to operate, are you referring to the suspension or the authority of all the Travelers companies, their entire billion dollar book of business? Or the suspension, the authority to operate in the subsidiary that they're trying to get out of?

MS. MATHIAS: I don't have the answer to that. I can take a stab at it, but I wouldn't be speaking with any particular authority because it's not an issue that I have participated in looking with that in mind.

CHAIRMAN ROBBINS: What does this committee need to do to get someone to come forward from the Department -- come before it, who can give us answers to the questions that we have?

MS. MATHIAS: Well, ...

CHAIRMAN ROBBINS: I gather you're the only person here from the Department today?

MS. MATHIAS: I'm the only person here from the Department today.

CHAIRMAN ROBBINS: And you haven't dealt with that, so you don't have the answer.

MS. MATHIAS: Not with whether it applies to the entire company or to only the affiliates against whom the order is issued. A reasonable thing would be to say it applies to the companies against whom the order was issued and who violated it. But I can't tell you ...

CHAIRMAN ROBBINS: But if the Commissioner were to order those affiliates out of California, the Commissioner would be giving Travelers exactly what it wanted.

MS. MATHIAS: That's right. Something like throwing Brer Rabbit into the Briar Patch.

CHAIRMAN ROBBINS: Something quite like that. So therefore, I would presume that in a path of vigilance on enforcing the law, that's not the path that the Commissioner would follow. What are the other options?

MS. MATHIAS: Those are the only options that I see under this chapter at this time, Senator.

CHAIRMAN ROBBINS: Okay. If the order of noncompliance, final order is issued, what is the penalty? What is the most severe penalty?

MS. MATHIAS: Well, the company would have to violate the order before the penalty was enacted, exacted.

CHAIRMAN ROBBINS: Okay. I would presume that the order would order the companies to renew. Is that a fair statement?

MS. MATHIAS: I can't comment on what the order is going to say, Senator. I don't know. That is a possibility. Yes, of course. That's one of the options.

CHAIRMAN ROBBINS: Okay. If an order were to be issued, and if the company were to not follow it, what is the most severe penalty the Department could impose?

MS. MATHIAS: Under this chapter there's a provision that a money penalty not to exceed \$10,000 a day shall attach and shall not exceed \$100,000 in the aggregate.

CHAIRMAN ROBBINS: So you're telling this committee not to worry about the fact that the Department isn't going to pursue a cease and desist order, the Department is operating under a section where they could impose a penalty with a maximum of \$100,000 on Travelers for illegally refusing to renew \$47 million in insurance policies, and on that we should not worry?

MS. MATHIAS: I'm not telling you we should not worry. There is another section, 1858.4, that says "In addition to other penalties provided in this code, the Commissioner shall suspend or revoke the license or the certificate of authority of any insurer with respect to classes or classes specified in the order which fails to comply within the time limit of that order, or any extension thereof which the Commissioner may grant pursuant to particular sections."

CHAIRMAN ROBBINS: Which is back to the section that says that the -- under the procedure -- without following a cease and desist order, but by following a procedure that the Commissioner is following, that the Commissioner could tell Travelers to stop writing auto insurance in California as a penalty. Is that the provision you're referring to?

MS. MATHIAS: I'm not sure I followed this, Senator.

CHAIRMAN ROBBINS: Well, if the provision that you're referring to is the one that says that in addition to the \$100,000 penalty, the Commissioner could order those subsidiaries to cancel their authority to do business in the state, then effectively under that alternate penalty, the Commissioner is giving Travelers precisely what they

would like to see.

MS. MATHIAS: That is only an option, Senator. I haven't said that the Commissioner will do that.

CHAIRMAN ROBBINS: Okay.

MS. MATHIAS: That's only what the code provides.

CHAIRMAN ROBBINS: What action under the path you're following, or that you now today tell us for the first time that the Department is following, proposing to follow, what -- how do you propose that the path you're following could solve the problem of the Travelers' policyholders?

MS. MATHIAS: Senator, I think we're going to have to take this step by step. The Department is following the procedure laid out in the code. I have indicated to you the time frame or in probably -- in a way you might say, at the lack of time frame within which the order will issue. If there is an order issued for the company to begin to renew, we'll have to take it a step by step. It's -- we like to think that the companies will begin to renew those policies.

We issued a similar order in the case of Firemen's Fund. They are under a consent order at the present time, so the situation is a little bit different. But ordinarily, companies comply with an order.

CHAIRMAN ROBBINS: Firemen's Fund has been a pussycat by comparison. I mean, Firemen's Fund, as I understand it, refused to renew ten policyholders in order to have a test case to go to court on. We're talking in this case of 25,000 policyholders. Firemen's Fund agreed to a consent order. The only issue involved with Firemen's Fund is the issue of renewal versus extension and the issue of reservation of rights.

But Travelers has made it very clear to this committee that they're going to pursue whatever is in the best interest of their profits of their corporation. The only thing that's going to cause them to follow the law is if the police officer that we've assigned to this, the Insurance Commissioner, provides a tough penalty: Do this or else! That has not been the way the Department has -- is intending to move. It has moved -- the Department has moved forward one tiny step at a time, and each time after being prodded. And now you tell us that you don't think you have the authority to issue a cease and desist order and you're taking a tougher procedure which is the noncompliance procedure. And I ask you the question: How will that procedure lead to solving the problem? And you've told me nothing to indicate that it's a tougher procedure. Am I -- if I'm missing something, please point it out to me, please tell me.

MS. MATHIAS: Senator, I think the effect is similar in that in either case the company is told to do something. It's my understanding that the penalties are greater for the order of noncompliance violations than they are under the cease and desist order violations. But I would rather defer that to -- at such time as our attorneys can

prepare a paper for you on that.

CHAIRMAN ROBBINS: If the penalties are greater, what is the penalty that's greater? What is the penalty?

MS. MATHIAS: I'm not sure of the monetary penalty under the cease and desist order. I would really prefer to give you that in writing.

CHAIRMAN ROBBINS: The monetary penalty is the same under a cease and desist order as under a noncompliance order. The difference is that under a cease and desist order, you can affirmatively order a company to take action. And if there's a more severe penalty under the noncompliance order, I've been unable to glean it from what you've told this committee.

I also think we're going to have to do something in the way we change our procedure to make certain that -- and I don't mean to, you know, in any way reflect on this -- you know, on you personally, that the Commissioner, if we're going to allow the Commissioner to send someone to testify in her place, after telling her that we prefer she came, that that somebody is going to have to come to the committee with the answers to the questions that the Commissioner was supplied with in advance. And I think we're going to have to also insist at future hearings that the legal department of the Commissioner be present, so that if it's a legal question, we can have the answer to that.

Maybe what we should do is go on to State Farm. Maybe you're going to have something better to tell me there.

The State Farm issue is fairly simple. When we had our hearing on November 18, the testimony was that State Farm was acting illegally by taking all new policy applicants, even those with perfect driving records, and putting them into their substandard company, State Farm Fire and Casualty, thus requiring them to pay premiums 20 to 40 percent higher; that this was illegal. The Commissioner on November 23 issued a letter of noncompliance to State Farm indicating it was illegal.

The last paragraph of that Notice of Noncompliance states: "Should you fail to make an adequate or timely response, the Commissioner will set a public hearing pursuant to Insurance Code Sections 1858.2 and 1858.3."

It has now been nine weeks since that notice was issued. Do you have something to tell this committee as to the status of that? I have been told various things unofficially and in confidence over the last few weeks of what was about to happen. Would you please tell us what the status is.

MS. MATHIAS: Senator, I may not be able to tell you more than you've already been told. We are preparing our ...

CHAIRMAN ROBBINS: But you will be able to tell it to me publicly and on the record?

MS. MATHIAS: We are in the situation of preparing our case against State Farm.

Again, we act as both prosecutor and judge in these cases; and any further remarks on my part would be improper.

CHAIRMAN ROBBINS: It has been nine weeks since the notice was issued during which your Department has been preparing its case. There has been no notice of a hearing. Can you tell us why there has been no notice of a hearing?

MS. MATHIAS: The hearing date has not been set, Senator. We are preparing our case, and when that is completed, we will issue a notice of hearing.

SENATOR WATSON: Not acceptable. Not acceptable.

CHAIRMAN ROBBINS: Okay, let me ask it a different way.

SENATOR WATSON: Mr. Chairman.

CHAIRMAN ROBBINS: Senator Watson.

SENATOR WATSON: I don't think we're getting anywhere.

CHAIRMAN ROBBINS: I read that loud and clear.

SENATOR WATSON: ... of questioning, and I feel that we were premature. I really feel that the Commissioner needs to be at the hearing. I think the witness can only do what she's been told to do, and she's very limited, and she's repeated her responses over and over again. We're not going to get anymore information about the process or the timing than we have already heard.

I think that we ought to recess this hearing, and not -- we could hear from the companies. But I really think we need to hold another one when the Commissioner is able to attend. I can't think of anything more important than to be here than -- you know, I don't know what else; maybe we chose a date that she was truly committed to doing something else. But in terms of implementing the law, and I think that's what these people out here want to hear, and I think the people who voted for 103 want to know when are we going to get tough.

Now, these little, small glitches in the law -- you know, whether we apply this or that -- I think we waste our time arguing those, because what I want to hear is, what is going to be done? As you said, if you're upset enough, you're going to move. And you know, somewhere down the line we put our case together and when we have the hearings, we'll do something -- that's not good enough for me, and I don't think that we can hold the Deputy responsible for responding. I want to hear from the horse herself, find out what she intends to do. Does she have the same kind of commitment she had when she made her misspeak in the hearing that you had dated December 14, 1988 -- she misspoke. All right, I can understand that. I certainly would have thought that maybe you would have had a communication that there could be no prosecution or could be no declaration of cease and desist, but we are pursuing a different kind of strategy, and this is what we have to do, this is the procedure; and by the end of February, we should be able to proceed. That's the kind of thing I think would be very meaningful. The rest of it is

a waste of our time. And I really feel that we need to have the Commissioner in our presence for her to answer the questions that we're raising and to give us a little more satisfaction in terms of time. I think it's abdication of responsibility for us to play games, and the people out there are suffering. We really need to have some closure on this. (Applause.)

CHAIRMAN ROBBINS: I agree with you, Senator Watson. We certainly do. Let me ask: From the State Farm case, the Department agrees, I gather, that State Farm has acted unlawfully by putting all of its new applicants in the substandard company rather than the preferred company?

MS. MATHIAS: The Department is preparing a case on this, Senator.

May I say something? You have made your point, both of you, and I understand that very well; but I would not like to leave the impression that the Senator -- that the Commissioner isn't merely taking her sweet time about this. She is committed to implementing the law. She wants the Department to do the best professional job it can in presenting these cases, and she is complying with the procedure that the Legislature has set out in the Insurance Code for her to do so.

SENATOR WATSON: Ms. Mathias, I appreciate those remarks and I hope that you do not interpret this as coming down on you. But what frustrates me is that the proposition passed in November, and we know that the insurance community out there is preparing to block it whatever way it can. I don't think there's a person in this room that doesn't understand that. I would, too, as a businessperson. But the Commissioner works for the State. And we're the Legislature. We've got to answer to our constituents. I have a stack of mail and telephone calls -- what is going on? The reason why I asked for zip codes is because we do know that's one of the reasons why the insurance proposition passed because there are zip codes that are included in the high-risk area, better known as redlining. I was unaware that there were areas in Thousand Oaks and Burbank and San Diego were also redlined. And I know people are suffering, because we're getting the calls in our offices now. And I'm not satisfied with "We'll get there one day." That's the reason why I want the Commissioner right here. What is her intent? Is she committed and determined and can she give us a frame of time? You can't. And I understand you're not the attorney to tell us why one law, and I'm not even arguing that issue. But I would like to hold the Commissioner's feet to the fire personally. And you're doing a fine job, and I respect what you're doing, but you're not the one. She's the bottom line, and I think we need to hold her feet to the fire to give us some satisfaction.

And once I hear something I think makes sense to me, then I can deal with my constituents, because I am in an area, I represent an area that's very high risk. We were redlined.

MS. MATHIAS: I know that's a ...

SENATOR WATSON: And this is an issue that we've been working on for ten years -- I've been working on for ten years or more. So you see, it's not good enough -- the responses you're giving me are not good enough. They don't satisfy me at this particular point.

We can adjourn right now and ask the Commissioner to come in and maybe we can get something, but I'll go through this because we haven't heard from the industry yet.

CHAIRMAN ROBBINS: I want to give the insurance companies, if they wish, an opportunity to respond. But the Commissioner is going to have to appear personally, is going to have to bring with her the legal counsel to the Department, and we're going to, while we endeavor to try to be reasonable in setting times and places for hearings, I think the extent of reasonableness would be that that would be not later than next week.

SENATOR WATSON: We can go to where she is.

CHAIRMAN ROBBINS: If she can't make it to either Los Angeles or Sacramento, as chair of this committee, and at least Senator Watson will go to wherever in the State of California the Commissioner will be. But not later than next week we have to have in some type of public forum answers that are substantially more definitive for the people of this state.

MS. MATHIAS: I will convey that to her, Senator.

CHAIRMAN ROBBINS: Okay.

MS. MATHIAS: Would you like us to prepare a paper on the difference between the cease and desist orders and the orders of noncompliance as far as the penalties go and so on?

CHAIRMAN ROBBINS: I would very definitely like that; and in particular, I would appreciate it if you would highlight in that what substantiates what you've said today, that the order for noncompliance is a -- I don't have the exact words, but you said -- would it be fairly paraphrasing it to see that it was a tougher procedure? Was that how you'd ...?

MS. MATHIAS: That's my understanding.

CHAIRMAN ROBBINS: Why it is a tougher procedure that the -- why it is tougher on the insurance companies what the Commissioner is proceeding with.

Unless you have something further you'd like to say -- I don't want to cut you off.

MS. MATHIAS: You won't cut me off, Senator. I've concluded my remarks.

CHAIRMAN ROBBINS: Okay, thank you very much.

Bob Hogeboom, Legal Counsel, Travelers Insurance -- is there anything you wish to say? Kent, is there anything you wish to say? You don't have to. I don't want to make comments without giving Travelers a right to respond. I believe in the philosophy of what something -- it's not an original quote but something someone else said, I believe

in justice. I think there should be a fair trial before we have the hanging.

MR. KENT KELLER: Senator, I am Kent Keller. Bob Hogeboom and I are both with Barger and Wolen, and we are counsel for Travelers in this matter. I have three things that I wanted to mention, and they're not very long.

On the question of timing, Senator, as you know, on December 23, 1988, we received the notice of compliance. As I believe you're aware, on that same day, we wrote to the Department of Insurance requesting a hearing on December the 29th. Now, we had thirty days just to think about it, and then maybe a hearing would be set. We asked for a hearing on December the 29th, 1988 because we wanted to get this issue resolved.

That hearing ultimately occurred, and you were present, on January the 4th. You heard my remarks at that time. You and I both asked the hearing officer to decide this matter as soon as possible, possibly that day. The Department asked for a week's time to respond to our brief. They were given that. We asked for two days to respond to whatever they wrote, and we met that time deadline. We believe that we are right, but fundamentally, we do want a decision as soon as possible. I understand the Department's concerns, that they want to make sure that they have done what they should. But in terms of foot-dragging, as soon as we got that notice of noncompliance, we responded.

All right, the second point. You have asked the representative of the Department -- I think your question was "what are we going to get?". Well, from Travelers' standpoint, the answer is a fair hearing. Mr. Faber is the hearing officer, and his job is to hear that matter fairly, and I'm confident he will. As you know, but Senator Watson was not present, and the people here were not present -- again, right or wrong, Travelers believes very strongly in its position, and we think we'll get an order which tells us that the notice of noncompliance should not have been issued.

Now, I understand, Senator, that you disagree. I understood that before your comments today. I understand it more today. I just would note that there's some interesting people that are agreeing with Travelers' positions on withdrawal. I took a look at the brief filed by State Attorney General, and he agrees with our position on withdrawal.

CHAIRMAN ROBBINS: Oh, I agree. You have a -- if you wish to withdraw, you can withdraw from the market. You have that legal right. But what the law requires is that you can't withdraw unless you do so legally, and to do so legally, you have to make contractual arrangements for another company to assume your renewal responsibilities to your policyholders. And that's what Travelers hasn't done. If Travelers wants to stop writing auto insurance in California, you can do so; but you've got to, for Mrs. Weir and Mrs. Black and Mrs. Dooley and Ms. Pitkonen, whose name I mispronounced because I still haven't figured out how to pronounce it correctly, and for the other 25,000 people affected, you have to make contractual arrangements for another insurance company to

assume your legal renewal obligation. If you do that, you can leave. I wouldn't want to stop you from doing that. I just want Travelers if they leave, to leave legally and to make certain their policyholders are taken care of, so we don't have a panic in the auto insurance market in California. And we've been, for several months, right on the verge of having a panic.

MR. KELLER: Well, Senator, we could debate it all morning. But as you know, it is our position that the mandatory renewal provision of Proposition 103 does not apply to a withdrawing company. It is that position which I believe John Van de Kamp endorses and I also believe the attorneys for the proponents and supporters of Proposition 103, led by Mr. Kushette, endorsed in their brief to the Supreme Court. But we'll never agree on that.

My final point is this: You have asked a number of questions about if the decision is the Travelers' position is incorrect, how do you compel Travelers to renew. That's not going to be hard. If the Department of Insurance tells us that our position is incorrect, we will contest that in court. But in the meantime, we will renew all the policies of insurance that are coming up for renewal and that's been a public position of Travelers, I believe, at least since your December 14, 1988 hearing.

Those are my only comments.

SENATOR WATSON: May I ask a question on the nonrenewal of the 25,000 auto policies?

MR. KELLER: It's not 25,000. But yes. I'm sorry.

SENATOR WATSON: Okay, this ...

CHAIRMAN ROBBINS: Well, it was initially when we first -- at our first hearing, we were told by Travelers -- testified they had 25,000 automobile insurance policyholders in California. In San Francisco, at the hearing in the Insurance Department, there was a reference to 22,000 policyholders. Is there a -- do you have a reconciliation of the two numbers? Is that a reduction in the number of policyholders?

MR. KELLER: Well, I don't want to get into misspeak, but I -- the 22,000 number was the number that was given to me. My current information is that presently, there have been approximately 1,800 policyholders who have been given notices of nonrenewal, and as to whom the date, the effective date of that nonrenewal has passed.

SENATOR WATSON: So it's been how many?

MR. KELLER: 1,800.

CHAIRMAN ROBBINS: Okay, so it's 1,800 in addition to the 22,000 or 1,800 off of the 22,000.

MR. KELLER: 1,800 total.

CHAIRMAN ROBBINS: So you're now down to 20,200?

MR. KELLER: Yes.

CHAIRMAN ROBBINS: And if the Department takes long enough, you'll be down to 406 policyholders before we get an order whether or not your company has acted lawfully or not.

MR. KELLER: Well, Senator, you're very persuasive. I'm sure you're going to get them to move fast. (Laughter)

CHAIRMAN ROBBINS: Well, I've been trying, but I haven't had a great deal of ...

MR. KELLER: The other thing you've got to get them to do is agree with your position.

SENATOR WATSON: Let me ask you these questions for my own information. We had several witnesses here today -- I don't know if you insure all of them -- but from the questions and their responses, they don't fall into the category of high risk. Why would they not be renewed? Why would those policies not be renewed?

MR. KELLER: It was a decision of Travelers on November the 7th, 1988 to nonrenew all private passenger automobile policies in California ...

SENATOR WATSON: As they came up for renewal.

MR. KELLER: ... as they came up for renewal, regardless of driving record.

SENATOR WATSON: I see.

MR. KELLER: Thank you.

CHAIRMAN ROBBINS: Thank you.

I'm going to take two -- Gene, you can come on forward. We're going to take a two-minute break, and I'm going to have -- I'm going to give you a couple questions. I warn you, they're going to put you a bit on the spot, but you won't mind answering those. Why don't we take about two minutes.

-- Recess --

CHAIRMAN ROBBINS: I'm inclined to if I could to -- Senator Watson will give autographs after the committee hearing. If you wish to leave an address, we'll get you a picture from her.

Gene, you represent State Farm, and on November 23, the Commissioner made a determination that State Farm was acting illegally by putting all of its new applicants -- State Farm is big. You write 17 percent of the -- 16.8 percent of the auto insurance policies in the State of California; that State Farm was acting illegally by forcing all new applicants -- these nice people who were canceled by Travelers and others -- to go into your substandard company, which meant a 20 to 40 percent increase in premium. How many policies does State Farm have in the State of California?

MR. GENE LIVINGSTON: Mr. Chairman, Senator Watson, my name is Gene Livingston. I'm with the law firm of Livingston and Mattesich, and our firm is representing State Farm in the administrative proceedings pending before the Department of Insurance and the Insurance Commissioner at this time.

State Farm insures three million policyholders in the State of California. State Farm Mutual, the preferred company, is continuing to write new policies for new cars acquired by existing policyholders. That is a number of around 5,500 new policies each week. State Farm Mutual is continuing to write new policies for new drivers in the families of existing policyholders. State Farm Mutual is continuing to write new policies for policyholders who have moved to California from other states and who were policyholders in those other states. State Farm Mutual, because of the tremendous underwriting losses that it has experienced in California in the past few years, made the decision in November to discontinue writing what is called "raw" new policies, that is, accepting as applicants people who have had no previous history with State Farm. Those underwriting losses, as you may know, totaled \$399 million in the 12 month period ending September 30, 1988. Those losses are expected to be even higher in 1989. So that was the basis for the decision that was made. State Farm Fire and Casualty is continuing to accept applicants on the same terms and conditions as it did prior to the passage of Proposition 103. There was no change at all with respect to that company.

CHAIRMAN ROBBINS: Okay. But what that means, now State Farm Fire and Casualty is the company that your premiums with State Farm Fire and Casualty are 20 to 40 percent higher than State Farm Mutual.

MR. LIVINGSTON: It is the standard company. The other -- the Mutual is a preferred company.

CHAIRMAN ROBBINS: So, for a driver with a perfect driving record, that would mean that driver would pay 20 to 40 percent higher than he or she would pay in the mutual company.

MR. LIVINGSTON: Probably 20 percent higher, yes.

CHAIRMAN ROBBINS: Okay. So, if Mrs. Black or one of the other people who testified this morning, who have been refused renewal by Travelers, applies to State Farm, you're going to charge them 20 percent more than someone else with a clean driving record who is already insured by your company.

MR. LIVINGSTON: The charge that the Fire and Casualty would be asking for would be higher than what the preferred existing policyholders are paying. They are not necessarily in the same category, however, Senator. Experience with State Farm and experience with the mutual company does indicate that there is an actuarial distinction. And, of course, the statute recognizes a number of grounds in which you can make distinctions, one of those is other reasonable considerations. And this certainly follows within that category. But there are a variety of explanations for why State Farm made that decision.

Of course, as you also know, in some of the conversations that we've had, State Farm has had under active consideration now for some time, the possibility of reopening

the Mutual company. And that discussion is still being conducted at very intense levels right now.

CHAIRMAN ROBBINS: I want to pursue that, and that's the key question I'm going to ask you. But, in addition, they're required -- in addition to the fact that these people would have to pay 20 percent higher, but their next door neighbor who is currently insured by State Farm would have to pay, who also has a perfect driving record. They're required to pay the year's premium in advance, in cash, rather than making monthly payments.

MR. LIVINGSTON: Under the Fire and Casualty, since this is the standard company, and since we've had no experience with the applicants and the policyholders, they pay for the premium in advance rather than making monthly payments, as is allowed in the Mutual company after a year's experience with the company. Once a person has been insured in the Fire and Casualty company for a year, they, too, are entitled to make monthly payments once a history has been established with that policyholder.

CHAIRMAN ROBBINS: You understand that the people who testified, and at least one case, their concern isn't what they're going to be doing a year from now. Their concern is how they're going to be able to afford to pay their premiums this year. Tell me what it is that -- if State Farm is considering reopening the Mutual, under what terms is State Farm considering reopening?

MR. LIVINGSTON: I'm in a position to discuss at this time is that State Farm has been actively discussing the possibility of reopening the Mutual and has been for some time. We're hopeful that a decision will be made fairly soon on that. We have had some discussions with the Insurance Commissioner or her representatives on that issue as well. And I can assure you that the Department of Insurance is preparing its case. I can tell from the communications that we've had with them that they are working actively on that. All of that is a factor in our desire to ...

CHAIRMAN ROBBINS: Do you consider taking nine weeks to notice the hearing, working actively?

MR. LIVINGSTON: I can tell you from my end of it, the matter representing the client, that the Department is not sitting back doing nothing on the case.

SENATOR WATSON: Mr. Chairman, may I just raise a question here? Mr. Livingston is a very fine attorney and is used to these kinds of hearings. What would you fear most under the law, cease and desist order or notice of noncompliance? What strikes fear in you most?

MR. LIVINGSTON: I think, Senator, that this may be a tempest in the teapot, it may be a distinction without a difference. A cease and desist order says, "Quit doing what you've been doing." The order of noncompliance says, "Quit doing what you've been doing because it's unlawful." And essentially the Commissioner is in a position to

seek further enforcement, if that is deemed to be necessary through the same procedure, which is to revoke the certificate of authority; which in State Farms case, as you can imagine, would be a very drastic result, a result that we would not get to at all.

SENATOR WATSON: I really feel that the insurance companies are not going to go out of California. This is one of their most lucrative markets. And I understand what you have to do, and I understand how you represent your clients, and you do a very good job. I think we're going to find grounds on which we can agree. And of course, we will have to endure all the threats that, you know, the insurance companies are going to leave the market in California, which I doubt will happen because in your wake will be other companies that are willing to come in here and take the risk.

Why is it that State Farm Insurance Company cannot look at an individual driving record, such as the people who have testified in front of us this morning? Why are you not renewing any policy that comes up for renewal? Why can't you base your risk-factor ...

CHAIRMAN ROBBINS: State Farm is renewing. State Farm -- what State Farm isn't doing is they're not accepting applicants in the preferred company at all.

SENATOR WATSON: Well, I was just reading the letter from them dated November 11.

MR. LIVINGSTON: State Farm is renewing.

SENATOR WATSON: It says, "No new or reinstated auto applicants will be accepted." I thought that was renewal.

MR. LIVINGSTON: No, ...

SENATOR WATSON: And, you are saying in the letter to all California agents, signed by Don Raker that added "cars as defined in the newly acquired car definition will continue to be accepted."

MR. LIVINGSTON: Right. We are continuing to write new policies for new cars acquired by existing policyholders in the Mutual company.

SENATOR WATSON: Yes. But new applicants coming in. And then also reinstated applicants, what is that?

MR. LIVINGSTON: That is somebody whose policy was lapsed for some reason, who now has to come, that person comes in as a new applicant.

SENATOR WATSON: But my question is still valid, is why can't your company look at the individual driving record as a basis on which to determine ...

MR. LIVINGSTON: Senator Watson, the economic realities are that the Mutual company lost \$399 million in the 12 month period ending September 30, 1988. Every new policy that we write in the Mutual company costs money; and that is money that is not available to pay claims; that is money that affects State Farm's ability to service its policyholders. The decision that was made in November was to protect its existing policyholders and not to exacerbate the problem by adding to its already loss situation

by adding new policyholders.

SENATOR WATSON: Well, there has been a stay on the 20 percent reduction, and that stay is still there. Am I correct?

MR. LIVINGSTON: That's correct.

SENATOR WATSON: Okay. What makes, now, it any different?

MR. LIVINGSTON: What makes the situa -- you mean, why are we considering reopening at this time?

SENATOR WATSON: Huh uh.

MR. LIVINGSTON: Well, I think that there are a number of things that State Farm is looking at. Obviously, one of the most important things, is what is this Legislature likely to do with respect to reducing cost in the years ahead. If there is some realistic hope there ...

SENATOR WATSON: Given that, let's just -- for sake of this discussion, say that the 20 percent reduction is staid by the court and is not tampered with by the Legislature, why is it that you can't take new applicants?

MR. LIVINGSTON: Oh, even apart, Senator Watson, from the 90 percent, say we lost the \$399 million before ...

SENATOR WATSON: Under the old law ...

MR. LIVINGSTON: Under the old law ...

SENATOR WATSON: Yes, under the old law.

MR. LIVINGSTON: Yes, yes.

SENATOR WATSON: Okay. Now, what is such a threat to you, under 103? Let's just remove the provision that reduces your premiums.

MR. LIVINGSTON: I've not articulated that our action was taken as a consequence of Proposition 103 being passed. The action was taken because of the losses we experienced in 1988 ...

SENATOR WATSON: You would have done this if there had not been any insurance reform issues on the ballot. Is that what you're saying?

MR. LIVINGSTON: Well, it's difficult to say what our action might have been, but for the initiatives, obviously the initiatives create a different kind of climate.

SENATOR WATSON: But these losses would have continued on. You know, in the State of California, there, on the average, is three cars per individual, and anyone who does business here, I'm sure, does a projection, you know, your actuarial data is probably more accurate than any other forecasters. So I mean, this is -- you know this. And I'm just wondering why are you making the difference now? Is it 103? If so, what's in 103 that makes it difficult? We're not going to discuss the 20 percent reduction; We're going to take that out of there.

MR. LIVINGSTON: I've not attributed anything in Proposition 103 as the reason for

the decision not to accept raw new business in the Mutual and to write it ...

SENATOR WATSON: But it just coincided with the passage of 103?

MR. LIVINGSTON: I think that you can understand that there was a very vigorous campaign under way prior to the election and ...

CHAIRMAN ROBBINS: State Farm contributed how much to the campaign?

MR. LIVINGSTON: I don't know the number. It was substantial, Senator Robbins.

SENATOR WATSON: Well, we've been in a state of crisis over insurance almost 6-8 years now, and we certainly have with the Legislature tried to find ways to deal with it. Because we could not, and because of your great amount of expertise, not you personally but you collectively, we are not able to get good reform, public policy out of the Legislature, which I think is a disgrace. The people took the law into their own hands. 103 is now a way of life. So what I'm hearing from you is that you were planning prior to November 8 to do something, take the kinds of steps that you've taken since the Proposition passed.

MR. LIVINGSTON: My testament, I think, Senator Watson, would be that because of the underwriting losses and the net losses that State Farm is experiencing, it would had to have taken some action. What that action might have been, it may have been different than the action that was taken.

SENATOR WATSON: So what you're saying is that we really need to reform the whole insurance industry in the State of California.

MR. LIVINGSTON: No, what I'm saying is we have to address the cost issues in California.

SENATOR WATSON: But you have to address the fact that we have 28 million people and everybody is going to drive eventually. That's just the way of life in this state. What is the insurance industry going to do to meet the needs of the people who -- we say everyone needs automobile insurance to be able to protect themselves against financial disaster. Some way you have to be a player in that game. And you know, I'm not naive enough to think that you just decided you're not going to take new applicants because you just decided that prior to November. I know the game.

What I am saying is that somewhere the industry has to be as responsible as the Legislature. You know, we've got to solve this problem, and I don't hear the responsibility falling on the shoulders of the industry. All you want to do, either have it your way or get out. You know I'm not saying that to you personally, Gene.

MR. LIVINGSTON: Okay.

CHAIRMAN ROBBINS: State Farm is not trying to get out.

MR. LIVINGSTON: Not at all.

SENATOR WATSON: No, I'm talking about the industry.

CHAIRMAN ROBBINS: Let me ask you one -- it will be the final line of questioning

for you. In terms of new applicants, your preferred company is not taking any new applicants today.

MR. LIVINGSTON: Any raw new -- Senator, there are new applicants who are ...

CHAIRMAN ROBBINS: I understand, but these nice people who testified earlier would not like being referred to as raw.

MR. LIVINGSTON: I apologize for the term. It's not even my invention, but ...

CHAIRMAN ROBBINS: They're people who were Travelers' policyholders. They've been refused renewal by Travelers. They need to get insurance from another company. They come to State Farm, somebody with a perfect driving record, who would clearly qualify for your preferred company, is going to have to pay 20 percent more than your existing policyholders, and after paying cash. Now, in a normal year, in mid-1988, how many new policies per month did State Farm write? in its preferred company?

MR. LIVINGSTON: A rough estimate, I assume would be between 30,000 and 40,000.

CHAIRMAN ROBBINS: New policies in the preferred company.

MR. LIVINGSTON: All. That would include new cars acquired by existing policyholders ...

CHAIRMAN ROBBINS: Okay, but of new applicants? To use your term, raw new ...

MR. LIVINGSTON: Oh, you mean -- oh, I don't know, Senator. I will be glad to provide that figure for you, but I don't have the number ...

CHAIRMAN ROBBINS: Could you make an approximation?

MR. LIVINGSTON: I have seen some numbers that would indicate to me that it was about 9 or 10 percent of the total new business ...

CHAIRMAN ROBBINS: Okay. So that would put it about -- there would be about 3,000. In a normal period, that would be about 3,000 raw new policies in the preferred company per month.

MR. LIVINGSTON: If the numbers are correct, as I understand them, yes.

CHAIRMAN ROBBINS: Okay. So that would mean that in the two months that it has been since the -- November 23 -- two months ago when the Department issued its notice of noncompliance, that the practice was unlawful of refusing -- of to allow people in your preferred company. Between that date and today, there would have been, in a normal course of business, 6,000 people who bought insurance in your preferred company who have not been able to do so.

MR. LIVINGSTON: That's correct. I should point out, Senator Robbins, that rates that are charged by the Fire and Casualty company is a very fair rate and is probably in itself inadequate to fully pay for the claims that will arise as a consequence of writing that business. So, not only is the Mutual company experiencing underwriting losses, but the Fire and Casualty company has as well. And the rates are not unreasonable in light of the cost and claims that had to be paid by those companies.

CHAIRMAN ROBBINS: Has the company ever charged a rate it considered was unfair?

MR. LIVINGSTON: Only inadequate, Senator Robbins.

CHAIRMAN ROBBINS: And I understand that from the company's perspective that the rates -- the charges are fair and/or are inadequate. The problem we have is that because of the passage of time, there really is no way we can ever make these people whole. If for someone who had a Travelers' policy that came up for renewal, they were refused renewal in December. They had to go out to another company; they called you, they called their local State Farm agent; they saw your ads; they've always had a very warm feeling for State Farm Insurance; they called State Farm Insurance; the guy had a perfect record; he was not allowed to buy insurance in your preferred company; he had to go elsewhere; he probably paid higher. We may or may not be able to identify that person to -- there's no way as time goes on that we can make people whole, and people are being hurt and losing money, are paying higher premiums, maybe going without insurance.

MR. LIVINGSTON: Senator Robbins, the rates that are charged by the Fire and Casualty company is an appropriate rate. It is a fair and reasonable charge for the coverage that is provided, and for the claims that arise from those policies. People are not being hurt in the sense in which I understand you to be using the terms. Insurance is expensive and it's getting more and more expensive because the cost of claims continues to escalate dramatically in California. And you're aware of those numbers, I know, and are considered about them, as we are.

CHAIRMAN ROBBINS: And ultimately, we're all going to have to work together to find ways to bring down the cost.

MR. LIVINGSTON: Yes.

CHAIRMAN ROBBINS: The first step, before we can there, is we all have to work together to stabilize the market and make sure there aren't any practices going on that are unlawful and cause destabilization in the marketplace. One of those things doesn't affect State Farm directly because you're renewing your policies, is the one major company, Travelers, who is not renewing, needs to get some kind of order from the Department whenever they conveniently get around to it so that they will start renewing their policies.

The other thing that needs to be done that does affect your company is that a person who has a perfect driving record, who qualifies for your preferred company, has to be allowed to make application in the preferred company. And if there is a substantial delay -- and I consider nine weeks already to be a substantial delay -- there's a substantial further delay, there will be more people who will be harmed. And those very same trial lawyers who are very clever and who file lots of imaginative lawsuits that increase the cost of providing auto insurance in California, will file a

whole bevy of class action suits, or other suits, to further impact your cost. Unfortunately, the people who are being hurt financially, who have individual problems, are probably not going to be helped.

I would urge you to urge the people in Bloomington to act with dispatch. State Farm has been a relative corporate good citizen through the years, and I would love nothing more than to be at a hearing or some other public event where I was publicly giving State Farm Insurance the type of positive PR that I would like to see your company get.

MR. LIVINGSTON: Senator Robbins, and as you know I will, I will communicate your message and Senator Watson's message to the people in Bloomington.

CHAIRMAN ROBBINS: Thank you.

MR. LIVINGSTON: Thank you.

CHAIRMAN ROBBINS: Let me thank everyone who participated in our hearing today. Let me thank Cal Gregory, who was the Travelers agent who was assisting in getting and identifying the names of some of the policyholders. And let me assure everyone that this committee and the entire California Senate is committed to doing everything that is necessary to stay on this with the full tenacity that you should expect of us to make certain that the issues that are before us are resolved, and resolved quickly; and that the large insurance companies that are affected will be required and will act lawfully, as you are required to act lawfully by carrying auto insurance and keeping proof of insurance in your vehicle.

Let me thank Senator Watson for her participation, and we will be having another hearing of this committee not later than next week to give the Commissioner an opportunity to be present personally.

SENATOR WATSON: I just wanted to reassure the people who are here that we will follow up with that. I think Insurance Commissioner has to state her position and her intentions in this regard.

I thank you, Mr. Chair, for holding this hearing, and I do hope we will get the cooperation of the Department, the Governor, and the insurance industry, and at least coming together and debating, and coming up with some kind of constructive way to solve this most critical problem. Thank you.

CHAIRMAN ROBBINS: Thank you. The hearing's adjourned.

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